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Paper No. 14

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MAY 18 2004

OFFICE OF PETITIONS

In re Application of  
Thomas W. Hagler  
Application No. 09/848,614  
Filed: May 3, 2001  
Attorney Docket No. M-10489-1P US

:  
: DECISION DISMISSING  
: PETITION UNDER  
: 37 CFR 1.137(b)  
:

This is a decision on the petition, filed August 18, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on March 6, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

A review of the file indicates that no reply to the non-final Office action of July 8, 2002 has been filed. A petition to revive cannot be granted where there is an outstanding requirement. In the instant case, a reply to the Office action must be provided along with an unintentional delay statement required by 37 CFR 1.137(b)(1).

Further correspondence with respect to this matter should be addressed as follows:

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Attn: Office of Petitions

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-5685.



Wan Laymon  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy